IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1723 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SAKARREFRIGERATIONPVTLTD - Petitioner(s)

Versus

BHADRESHKUMARRAMESHCHADNRASHAH - Respondent(s)

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Appearance :

MR RK MISHRA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR ARVIND B PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/10/2005

ORAL JUDGMENT

In the present petition, the petitioner-employer has challenged the legality of the order dated 29.11.2000 passed by the Labour Court, Ahmedabad.

2. The respondent had filed a recovery application No.2595/2000 against the present petitioner. The recovery application was sought to be resisted by the petitioner on several grounds including the ground that the respondent is not engaged as a workman since he was drawing salary of Rs.6000 per month and was discharging duties as a Manager. The petitioner also requested the Labour Court to decide the question of status of the respondent and consequently the maintainability of the recovery application as a preliminary issue. The Labour Court, however, rejected the application filed by the petitioner-employer and provided that the said question will be decided after recording of evidence of both sides along with the recovery application itself. While disposing of the application of the petitioner, it was observed that to decide the issue in question, it would be necessary to record evidence and in absence of any evidence, it would not be proper to presume that the respondent herein was discharging managerial duties.

3. The order passed by the Labour Court was at an interim stage. The Labour Court exercised discretionary powers and provided that the issue can be more conveniently decided along with the main application

itself since it would require recording of evidence to hold whether the employee was engaged as Manager and was discharging manegerial duties or not. I do not find that the Labour Court has committed any jurisdictional error in passing the impugned order. No interference, therefore, is called for in the present petition. The petition is therefore rejected. Rule is discharged with no order as to costs. Interim relief is vacated.

(Akil Kureshi, J.)